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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG831**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; incidental harassment authorization; request for comments on proposed renewal.

**SUMMARY:** NMFS received a request from the St. George Reef Lighthouse Preservation Society (Society) for the renewal of their currently-active, incidental harassment authorization (IHA) to take marine mammals incidental to aircraft operations, lighthouse renovations, and tour operations associated with preservation of the St. George Reef Lighthouse Station (Station) on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean. These activities are identical to those covered in the current authorization. Pursuant to the Marine Mammal Protection Act. Prior to issuing the currently-active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period. Any comments received on the potential

renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application,

renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>*. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking

for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e), indicate that IHAs may be renewed for additional periods of time, not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-year IHA renewal when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA. All of the following conditions must be met in order to issue a Renewal:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:
  - (1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the initial findings remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: <https://www.fisheries.noaa.gov/iha-renewals>.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this

categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the renewal IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

### **History of Request**

On April 13, 2018, NMFS issued an IHA to the Society to take marine mammals incidental to the lighthouse maintenance and preservation project at NWSR, Del Norte County, California (83 FR 19254, May 2, 2018), effective from February 19, 2018 through February 18, 2019. On December 6, 2018, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

### **Description of the Specified Activities and Anticipated Impacts**

The Station is located on NWSR offshore from Crescent City, California in the northeast Pacific Ocean. NWSR rises approximately 5.18 meters (m) (17 feet (ft)) above sea level. Because NWSR has no safe landing for boats, the islet is accessed only by helicopter. The Society visits the Station to conduct lighthouse renovations and periodic maintenance on the Station's optical light system, as well as public tours of the historic

lighthouse. Station visits occur one weekend per month (Friday, Saturday, and Sunday), from November through April. The following specific aspects of the proposed activities would likely result in the take of marine mammals: acoustic and visual stimuli from (1) helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.*, painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.*, bulb replacement and automation of the light system); and (4) human presence. These activities are identical to those analyzed in the initial IHA issued by NMFS, described in detail in the **Federal Register** notice of proposed IHA (83 FR 8841, March 1, 2018). As in the initial authorization, NMFS anticipates that take, by Level B harassment only, of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*) of the eastern U.S. Stock, and northern fur seals (*Callorhinus ursinus*) could result from the specified activity (83 FR 19254, May 2, 2018).

#### *Detailed Description of the Activity*

A detailed description of the restoration, maintenance, and tour operations for which take is proposed here may be found in the Notices of the Proposed and Final IHAs for the initial authorization (83 FR 8841, March 1, 2018; 83 FR 19254, May 2, 2018). The location (as described in the *Specific Geographic Region* section of the initial IHA), timing, amount, and nature of the specified activities, including the types of equipment planned for use, are identical to those described in the previous notices. The proposed renewal would be effective for a period of one year from the date of issuance.

#### *Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which

authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** Notice of the Proposed IHA for the initial authorization (83 FR 8841, March 1, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The draft 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly, however, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the section *Description of Marine Mammals in the Area of Specified Activities* contained in the supporting documents for the initial IHA.

#### *Potential Effects on Marine Mammals and their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the **Federal Register** Notice of the Proposed IHA for the initial authorization (83 FR 8841, March 1, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that no new information affects our initial analysis of impacts on marine mammals and their habitat.

#### *Estimated Take*

Detailed descriptions of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** Notices of the Proposed and Final IHAs for the initial authorization (83 FR 8841, March 1, 2018; 83 FR 19254, May 2, 2018). Specifically, the number of days of operation and marine mammal occurrence



data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the initial IHA, as do the number of takes, which are indicated below in Table 1.

In their 2018 monitoring report, the Society reported a total of 40 takes of California sea lions, three takes of Steller sea lions, and zero takes of northern fur seals and harbor seals from four visits to NWSR. All takes qualified as Level B harassment in the form of behavioral disturbance. These take numbers fall far below the take authorized in the initial IHA (83 FR 19254, May 2, 2018) and the identical numbers proposed to be authorized in this IHA, which are indicated below.

**Table 1. Estimated Take of Marine Mammals.**

<b>Species</b>	<b>Maximum Observed per Day</b>	<b>Days of Proposed Activity</b>	<b>Estimated Take</b>	<b>Stock Abundance</b>	<b>Percent of Stock</b>
California sea lion ( <i>Zalophus californianus</i> )	160	18	2,880	257,606	1.1
Steller sea lion ( <i>Eumetopias jubatus</i> )	155	18	2,790	41,638	6.7
Pacific harbor seal ( <i>Phoca vitulina</i> )	2	18	36	30,968	0.35
Northern fur seal ( <i>Callorhinus ursinus</i> )	1	18	18	14,050	0.12

#### *Description of Required Mitigation, Monitoring, and Reporting Measures*

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** Notice announcing the issuance of the initial 2018 IHA, and the discussion of the least

practicable adverse impact included in that document (83 FR 19254, May 2, 2018) and the Notice of the proposed IHA (83 FR 19254, May 2, 2018) remains accurate. The same following measures are proposed for inclusion in this IHA:

The Society would conduct restoration and touring activities at a maximum of once per month over the course of the year, with the exception of between May 1, 2019 through October 31, 2019 when no restoration or touring activities would occur (barring potential emergency light repairs during this time). Each restoration session would last no more than three days. Maintenance of the light beacon would occur only in conjunction with restoration activities (except if an emergency light repair is needed from May 1, 2019 through October 31, 2019).

The Society would ensure that its helicopter approach patterns to the Station and timing techniques would be conducted at times when marine mammals are less likely to be disturbed. To the extent possible, the helicopter should approach NWSR when the tide is too high for the marine mammals to haul out on NWSR. Additionally, since the most severe impacts (stampede) precede rapid and direct helicopter approaches, the Society's initial approach to the station must be offshore from the island at a relatively high altitude (*e.g.*, 800 – 1,000 ft, or 244 – 305 m). Before the final approach, the helicopter must circle lower and approach from the area with the lowest pinniped density. If for any safety reasons (*e.g.*, wind condition) the Society cannot conduct these types of helicopter approach and timing techniques, they must postpone the restoration and maintenance activities for that day.

The Society would instruct its members and restoration crews to avoid making unnecessary noise and avoid visual detection by pinnipeds around the base of the station.

Although Crescent Coastal Research reported no impacts from these activities in a 2001 study (CCR 2001), it is relatively simple for the Society to avoid this potential impact. The door to the lower platform shall remain closed and barricaded to all tourists and other personnel since the lower platform is used at times by pinnipeds.

A NMFS approved, experienced biologist will be present on the first flight of each day of the activity. This observer will be able to identify all species of pinnipeds expected to use the island, and qualified to determine age and sex classes when viewing conditions allow. The observer would record data including species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the activities, including location, date, and time of the event. In addition, the Society would record observations regarding the number and species of any marine mammals either observed in the water or hauled out.

Aerial photographic surveys provide an accurate means of documenting species composition, age, and sex class of pinnipeds using the project site during human activity periods. The Society should complete aerial photo coverage from the same helicopter used to transport the Society's personnel to the island during restoration trips. The Society would take photographs of all marine mammals hauled out on the island from an altitude greater than 300 m (984 ft) by a skilled photographer, on the first flight of each day of activities. These photographs will be forwarded to a biologist capable of discerning marine mammal species. Data shall be provided to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see below). The original photographs would be made available to NMFS or other marine mammal experts for inspection and further

analysis, if requested.

The Society would submit a draft report to NMFS' Office of Protected Resources no later than 90 days after the conclusion of restoration activities in April. The report will include a summary of the information gathered pursuant to the monitoring requirements described here and set forth in the final IHA. The Society will submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft report. If the Society receives no comments from NMFS on the draft report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the project. The report will provide:

1. A summary and table of the dates, times, and weather during all activities;
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities;
3. An estimate of the number (by species) of marine mammals exposed to human presence associated with the Society's activities; and
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

### **Public Comments**

As noted previously, NMFS published a notice of a proposed IHA (83 FR 8841, March 1, 2018) and solicited public comments on both our proposal to issue the initial IHA for lighthouse restoration, maintenance, and tour operations, and on the potential for a renewal, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (83 FR 19254, May 2, 2018). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the renewal of the 2018 IHA.

*Comment:* The Marine Mammal Commission (Commission) requested clarification of certain issues associated with NMFS's notice that one-year renewals can be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

*Response:* The notice of the proposed IHA expressly notified and invited comment from the public on the possibility that under certain, limited conditions the applicant could seek a renewal IHA for an additional year. The notice described the conditions under which such a renewal request could be considered and expressly sought public comment in the event such a renewal were sought. Further, since issuance of the initial IHA NMFS has modified the renewal process to provide notice through the **Federal Register** and an additional 15-day public comment period at the time the renewal IHA is requested. NMFS also will provide direct notice of the proposed renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments.

We appreciate the Commission's suggestion that NMFS discuss the potential for IHA renewals through a more general route, such as a rulemaking. However, utilizing the public comment process associated with IHAs is more efficient for the agency, while still providing for appropriate public input into NMFS' decision-making. Further, NMFS' recent modification to the renewal process (*i.e.*, soliciting additional public comment at the time of a renewal request) should alleviate the Commission's concern about the lack of additional public comment and need for a more general rulemaking.

For more information, NMFS has published a description of the renewal process on our website (available at <https://www.fisheries.noaa.gov/iha-renewals>).

### **Preliminary Determinations**

The lighthouse restoration, maintenance, and public tour activities proposed by the Society are identical to those analyzed in the initial IHA, as are the number of days of activity, the method of taking, and the effects of the action. The potential effects of the Society's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that the Society's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than 7 percent of all stocks). The numbers of marine mammals proposed to be taken in this authorization are identical to those authorized in the initial IHA. The mitigation measures and monitoring and reporting requirements as described above also are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This

includes consideration of the estimated abundance of California sea lions decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Society's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

### **Proposed Renewal and Request for Public Comment**

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Society for conducting lighthouse restoration, maintenance, and public tour operations at NWSR once per month, from November through April, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed renewal can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>. We request comment on our analyses, the proposed renewal, and any other aspect of this Notice for the proposed lighthouse restoration, maintenance, and public tours. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: March 1, 2019.

Donna S. Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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